

ENTERED

May 23, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

R WAYNE JOHNSON,

Plaintiff,

VS.

U S POSTAL SERVICE,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:17-CV-1558

MEMORANDUM AND ORDER

R. Wayne Johnson, an inmate incarcerated at the Clements Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, has filed a civil rights complaint. Johnson has not paid the filing fee. This action will be dismissed pursuant to the provisions of 28 U.S.C. § 1915(g).

Barring a show of imminent danger, under the Prison Litigation Reform Act of 1995, a prisoner may not file an action without prepayment of the filing fee if he has, on three or more prior occasions, filed a prisoner action in federal district court or an appeal in a federal court of appeals which was dismissed as frivolous or malicious. 28 U.S.C. § 1915(g); *Adepegba v. Hammons*, 103 F.3d 383, 385 (5th Cir. 1996). Johnson accumulated at least 14 such dismissals before filing the pending complaint, and is no longer allowed to proceed *in forma pauperis* pursuant to the provisions of section 1915(g). See, e.g., *Johnson v. Texas Tech*, No. 5:16-cv-276 (N.D. Tex. Dec. 28, 2016); *Johnson v. United States Marine Corps*, No. 2:13-cv-66 (N.D. Tex. July 15, 2013); *Johnson v. Thaler*, No. 2:10-cv-41 (N.D. Tex. Feb. 27, 2012); *Johnson v. Thaler*, No. 2:10-cv-006 (N.D. Tex. Apr. 6, 2011); *Johnson v. Sloan*, No. 2:09-cv-169 (N.D. Tex. Oct. 26, 2009); *Johnson and Gutierrez v. Livingston*, No. 4:05-cv-2651 (S.D. Tex. Aug. 5, 2005); *Johnson v. Dretke*, No. 4:05-cv-1433 (S.D. Tex. Apr. 28, 2005); *Johnson v. Cockrell*, No.

2:03-cv-170 (N.D. Tex. Nov. 17, 2003); *Johnson v. McCaul*, No. 3:03-cv-13 (S.D. Tex. Apr. 14, 2003); *Johnson v. Whatley*, No. 2:02-cv-107 (S.D. Tex. April 5, 2002). Johnson's allegations do not plead any facts showing that he is in any immediate danger which would warrant waiver of the fee requirement. See *Choyce v. Dominguez*, 160 F.3d 1068, 1071 (5th Cir. 1998); *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

In light of the pleadings and his litigation history, Johnson has failed to show that he is eligible to proceed as a pauper and has also failed to assert a claim that has any legal basis. Consequently, this action should be dismissed pursuant to 28 U.S.C. § 1915(g) and 28 U.S.C. § 1915(e). This dismissal shall count as a strike under section 1915(g).

The court ORDERS that the Complaint (Docket Entry No. 1), filed by TDCJ-CID inmate R. Wayne Johnson, TDCJ-CID No. 00282756 is DISMISSED. 28 U.S.C. § 1915(g); 28 U.S.C. § 1915(e).

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the parties, to the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, Fax Number (512) 936-2159, and to the three strikes coordinator for this district, Three_Strikes@txs.uscourts.gov.

SIGNED on this 23rd day of May, 2017.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge